

**ASSEMBLY BILL**

**No. 851**

**Introduced by Assembly Member Koretz**

February 18, 2005

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An act to amend Section 299 of, and to add Chapter 16 (commencing with Section 1425) to Title 10 of Part 2 of, the Penal Code, relating to criminal records.

LEGISLATIVE COUNSEL'S DIGEST

AB 851, as introduced, Koretz. Criminal records: expungement.

Under existing law, a person whose DNA sample was taken pursuant to an arrest or conviction may petition the court to make an order to have his or her specimen and sample destroyed and database profile expunged, if certain findings are made related to the person's innocence.

This bill would delete the requirement that the person has to petition the court, and would require the Department of Justice to destroy the sample or specimen, and expunge the records relating thereto. The bill also would provide that if a person is found to be factually innocent, whether subsequent to arrest or conviction, as a result of DNA testing or decree, the court of record shall order the records of the person expunged, and shall transmit that order to the Department of Justice. Upon receipt of that order, the Department of Justice would be required to ensure that any records in its possession related to the crime for which the person is found factually innocent are expunged, including sending notice to local law enforcement agencies that may have received those records from the department.

Because the bill would expand the duties of local law enforcement agencies with respect to the expungement of records, the bill would create a state- mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 299 of the Penal Code is amended to  
2 read:

3 299. (a) A person whose DNA profile has been included in  
4 the data bank pursuant to this chapter shall have his or her DNA  
5 specimen and sample destroyed and searchable database profile  
6 expunged from the data bank program pursuant to the procedures  
7 set forth in subdivision (b) if the person has no past or present  
8 offense or pending charge which qualifies that person for  
9 inclusion within the state's DNA and Forensic Identification  
10 Database and Data Bank Program and there otherwise is no legal  
11 basis for retaining the specimen or sample or searchable profile.

12 (b) Pursuant to subdivision (a), a person who has no past or  
13 present qualifying offense, and for whom there otherwise is no  
14 legal basis for retaining the specimen or sample or searchable  
15 profile, ~~may make a written request to have~~ *shall have* his or her  
16 specimen and sample destroyed and searchable database profile  
17 expunged from the data bank program *without needing to amend*  
18 *a written request if any of the following occur:*

19 (1) Following arrest, no accusatory pleading has been filed  
20 within the applicable period allowed by law charging the person  
21 with a qualifying offense as set forth in subdivision (a) of Section  
22 296 or if the charges which served as the basis for including the  
23 DNA profile in the state's DNA Database and Data Bank  
24 Identification Program have been dismissed prior to adjudication  
25 by a trier of fact;

1 (2) The underlying conviction or disposition serving as the  
2 basis for including the DNA profile has been reversed and the  
3 case dismissed;

4 (3) The person has been found factually innocent of the  
5 underlying offense pursuant to Section 851.8, or Section 781.5 of  
6 the Welfare and Institutions Code; or.

7 (4) The defendant has been found not guilty or the defendant  
8 has been acquitted of the underlying offense.

9 (c) ~~(1) The person requesting the data bank entry to be~~  
10 ~~expunged must send a copy of his or her request to the trial court~~  
11 ~~of the county where the arrest occurred, or that entered the~~  
12 ~~conviction or rendered disposition in the case, to the DNA~~  
13 ~~Laboratory of the Department of Justice, and to the prosecuting~~  
14 ~~attorney of the county in which he or she was arrested or,~~  
15 ~~convicted, or adjudicated, with proof of service on all parties.~~  
16 ~~The court has the discretion to grant or deny the request for~~  
17 ~~expungement. The denial of a request for expungement is a~~  
18 ~~nonappealable order and shall not be reviewed by petition for~~  
19 ~~writ.~~

20 ~~(2) Except as provided below, the Department of Justice shall~~  
21 ~~destroy a specimen and sample and expunge the searchable DNA~~  
22 ~~database profile pertaining to the person who has no present or~~  
23 ~~past qualifying offense of record upon receipt of a court order~~  
24 ~~that verifies the applicant has made the necessary showing at a~~  
25 ~~noticed hearing, and that includes all of the following:~~

26 ~~(A) The written request for expungement pursuant to this~~  
27 ~~section.~~

28 ~~(B) A certified copy of the court order reversing and~~  
29 ~~dismissing the conviction or case, or a letter from the district~~  
30 ~~attorney certifying that no accusatory pleading has been filed or~~  
31 ~~the charges which served as the basis for collecting a DNA~~  
32 ~~specimen and sample have been dismissed prior to adjudication~~  
33 ~~by a trier of fact, the defendant has been found factually~~  
34 ~~innocent, the defendant has been found not guilty, the defendant~~  
35 ~~has been acquitted of the underlying offense, or the underlying~~  
36 ~~conviction has been reversed and the case dismissed.~~

37 ~~(C) Proof of written notice to the prosecuting attorney and the~~  
38 ~~Department of Justice that expungement has been requested.~~

39 ~~(D) A court order verifying that no retrial or appeal of the case~~  
40 ~~is pending, that it has been at least 180 days since the defendant~~

~~1 or minor has notified the prosecuting attorney and the  
2 Department of Justice of the expungement request, and that the  
3 court has not received an objection from the Department of  
4 Justice or the prosecuting attorney.~~

~~5 (d) Upon order from the court, the~~ The Department of Justice  
6 shall destroy any specimen or sample collected from the person  
7 and any searchable DNA database profile pertaining to the  
8 person, unless the department determines that the person is  
9 subject to the provisions of this chapter because of a past  
10 qualifying offense of record or is or has otherwise become  
11 obligated to submit a blood specimen or buccal swab sample as a  
12 result of a separate arrest, conviction, juvenile adjudication, or  
13 finding of guilty or not guilty by reason of insanity for an offense  
14 described in subdivision (a) of Section 296, or as a condition of a  
15 plea.

16 The Department of Justice is not required to destroy analytical  
17 data or other items obtained from a blood specimen or saliva, or  
18 buccal swab sample, if evidence relating to another person  
19 subject to the provisions of this chapter would thereby be  
20 destroyed or otherwise compromised.

21 Any identification, warrant, probable cause to arrest, or arrest  
22 based upon a data bank or database match is not invalidated due  
23 to a failure to expunge or a delay in expunging records.

24 (e) Notwithstanding any other provision of law, the  
25 Department of Justice DNA Laboratory is not required to  
26 expunge DNA profile or forensic identification information or  
27 destroy or return specimens, samples, or print impressions taken  
28 pursuant to this section if the duty to register under Section 290  
29 or 457.1 is terminated.

30 (f) Notwithstanding any other provision of law, including  
31 Sections 17, 1203.4, and 1203.4a, a judge is not authorized to  
32 relieve a person of the separate administrative duty to provide  
33 specimens, samples, or print impressions required by this chapter  
34 if a person has been found guilty or was adjudicated a ward of  
35 the court by a trier of fact of a qualifying offense as defined in  
36 subdivision (a) of Section 296, or was found not guilty by reason  
37 of insanity or pleads no contest to a qualifying offense as defined  
38 in subdivision (a) of Section 296.

39 SEC. 2. Chapter 16 (commencing with Section 1425) is added  
40 to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 16. EXPUNGEMENT OF RECORDS

1425. (a) If a person is found to be factually innocent, whether subsequent to arrest or conviction, as a result of DNA testing or judicial or gubernatorial decree, the court of record shall order the records of the person expunged, and shall transmit that order to the Department of Justice.

(b) Upon receipt of an order pursuant to subdivision (a), the Department of Justice shall ensure that any records in its possession related to the crime for which the person is found factually innocent are expunged. This includes, if applicable, sending notice to local law enforcement agencies that may have received those records from the department.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.